

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ASTROPOWER LIQUIDATING TRUST,
f/k/a ASTROPOWER, INC.,

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§
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Plaintiff,

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§
§

Civil Action No. 06-469 (JJF)

v.

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§
§

KPMG, LLP,

§
§
§

Defendant.

§

JOINT MOTION FOR MODIFICATION OF SCHEDULING ORDER

Pursuant to Federal Rule of Civil Procedure 6(b), Plaintiff AstroPower Liquidating Trust, f/k/a AstroPower, Inc. (“Plaintiff”) and Defendant KPMG, LLP (“Defendant”) (collectively, the “Parties”), file this Joint Motion for Modification of Scheduling Order and, in support, show:

1. On May 9, 2008, the Court entered the Amended Rule 16 Scheduling Order (D.I.26) (“Amended Scheduling Order”).

2. The Amended Scheduling Order provides, inter alia, that the exchange and completion of interrogatories, identification of all fact witnesses, and document production shall be commenced so as to be completed by August 1, 2008.

3. The Parties have served requests for the production of documents and have been working diligently to collect, review and produce voluminous documents within the proscribed time period.

4. The Parties also have been engaged in preliminary settlement negotiations that could resolve this matter out of court.

5. The Parties agree that a modification of the current scheduling order is necessary to provide the parties adequate time to continue their ongoing settlement negotiations, as well as, if necessary, to complete document production, written discovery, designate experts, complete the substantial number of depositions anticipated to be taken, prepare dispositive motions and/or mediation, and complete all pre-trial disclosures.

6. Accordingly, the Parties request that the Court extend the deadline for the exchange and completion of interrogatories, identification of all fact witnesses, and document production deadline to September 5, 2008.

7. Therefore, the Parties move the Court to enter the proposed Amended Rule 16 Scheduling Order attached to this Motion as Exhibit A. A document comparison of the current Amended Scheduling Order and the proposed Amended Scheduling Order is attached hereto as Exhibit B.

8. The Court has scheduled a Pretrial Conference for this matter on October 8, 2009. No trial date has been scheduled.

Wherefore, for the foregoing reasons, the Parties jointly request that the Court enter an Order amending the current Amended Rule 16 Scheduling Order as set forth in Exhibit A and granting such other and further relief as the Court deems appropriate.

Dated: August 1, 2008

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Dated: August 1, 2008

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Counsel to KPMG, LLP

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ASTROPOWER LIQUIDATING TRUST, §
f/k/a ASTROPOWER, INC., §
§
Plaintiff, § Civil Action No. 06-469 (JJF)
v. §
§
KPMG, LLP, §
§
Defendant. §

AMENDED RULE 16 SCHEDULING ORDER

The Parties having satisfied their obligations under Fed. R. Civ. P.26(f),

IT IS ORDERED that:

1. **Pre-Discovery Disclosures.** The Parties will exchange a list of witnesses with knowledge and current contact information (as known to the Parties at this time) on or before September 28, 2007. The Parties have agreed that the other categories of information set forth in Fed. R. CIV. P. 26(a)(1) and D. Del. LR 16.2 need not be exchanged through initial disclosures.

2. **Joinder of the Parties.** The deadline by which either of the Parties may cause a summons and complaint to be served upon a party not presently a party to this matter is December 1, 2007.

3. **Discovery.**

(a) Exchange and completion of interrogatories, identification of all fact witnesses, and document production shall be commenced so as to be completed by Friday, September 5, 2008.

- (b) A maximum of twenty-five (25) interrogatories may be served by each Party on any other Party.
- (c) A maximum of twenty-five (25) requests for admission may be served by each Party on any other Party.
- (d) A maximum of twenty (20) depositions may be taken by plaintiff(s) and a maximum of twenty (20) depositions may be taken by defendant(s). This includes expert depositions. Depositions shall not commence until the discovery required by Paragraph 3 (a, b, and c) are completed.
- (e) Depositions of fact witnesses shall be completed by Friday, December 19, 2008.
- (f) The Parties shall make all disclosures required by FED. R. CIV. P. (26)(a)(2)(A)-(B) regarding expert witnesses offered by either party on an issue on which that Party has the burden of proof by Friday, January 30, 2009. The Parties shall make all disclosure required by the above-referenced rules regarding expert witnesses offered by either Party on an issue on which that Party does not have the burden of proof by Friday, May 1, 2009. The Parties shall complete all discovery pertaining to expert witnesses by Friday, May 1, 2009.
- (g) The Parties agree to waive this Court's form requirement that any Party desiring to depose an expert witness shall notice and complete said deposition no later than thirty (30) days from receipt of said expert's report.

4. Discovery Disputes.

- (a) A Party seeking discovery which the opposing Party refuses to provide shall file a motion (no brief) pursuant to Rule 37 of the Federal Rules of Civil Procedure and Local Rule 37.1. Said motion shall not exceed a total of four (4) pages. An Answer to the

Rule 37 motion, not to exceed four (4) pages, shall be filed within five (5) days of service of the motion. No reply is permitted.

(b) All papers shall set forth in a plain and concise manner the issue(s) in dispute, the Party's position on the issue(s), and the reasons for the Party's position.

(c) Upon receipt of the Answer, the movant shall notify Chambers by email at jif_civil@ded.uscourts.gov that the Parties have completed briefing.

(d) Upon receipt of the movant's e-mail, the Court will determine whether a conference is necessary and advise the Parties accordingly.

(e) There is no limit on the number of Rule 37 motions a Party may file, unless otherwise ordered by the Court.

5. Amendment of the Pleadings. The deadline by which either of the Parties may amend their pleadings is December 1, 2007.

6. Case Dispositive Motions. Any case dispositive motions, pursuant to the Federal Rules of Civil Procedure, shall be served and filed with an opening brief on or before Friday, June 26, 2009. Briefing shall be pursuant to D.Del. LR 7.1.2. No case dispositive motion may be filed more than ten (10) days from the above date without leave of the Court.

7. Application by Motion.

(a) Any applications to the Court shall be by written motion filed with the Clerk of the Court in compliance with the Federal Rules of Civil Procedure and the Local Rules of Civil Practice for the United States District Court for the District of Delaware (Amended Effective January 1, 1995). Any non-dispositive motion shall contain the statement required by D. Del. LR 7.1.1 Briefs shall be limited to no more than ten (10) pages. Parties may file stipulated and unopposed Orders with the Clerk of the Court for the Court's review and signing.

The Court will not consider applications and requests submitted by letter or in a form other than a motion.

- (b) No facsimile transmissions will be accepted.
- (c) No telephone calls shall be made to Chambers.
- (d) Any Party with a true emergency matter requiring the assistance of

the Court shall e-mail Chambers at: jjf_civil@ded.uscourts.gov. The e-mail shall provide a short statement describing the emergency.

Pretrial Conference and Trial. A pretrial conference will be conducted by the Court on Thursday, October 8, 2009. No trial date has been scheduled.

DATE

UNITED STATES DISTRICT JUDGE

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ASTROPOWER LIQUIDATING TRUST,
f/k/a ASTROPOWER, INC.,

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Plaintiff,
v.

Civil Action No. 06-469 (JJF)

KPMG, LLP,

Defendant.

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2. Joinder of the Parties. The deadline by which either of the Parties may cause a summons and complaint to be served upon a party not presently a party to this matter is December 1, 2007.

3. Discovery.

(a) Exchange and completion of interrogatories, identification of all fact witnesses, and document production shall be commenced so as to be completed by Friday, August 1, September 5, 2008.

- (b) A maximum of twenty-five (25) interrogatories may be served by each Party on any other Party.
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- (d) A maximum of twenty (20) depositions may be taken by plaintiff(s) and a maximum of twenty (20) depositions may be taken by defendant(s). This includes expert depositions. Depositions shall not commence until the discovery required by Paragraph 3 (a, b, and c) are completed.
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DATE

UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I, John T. Dorsey, Esquire, hereby certify that on this 4th day of August, I caused a true and correct copy of the attached **Joint Motion for Modification of Scheduling Order** to be filed with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

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I further certify that I have served the parties listed on the service list below in the manner indicated.

/s/ John T. Dorsey
John T. Dorsey

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